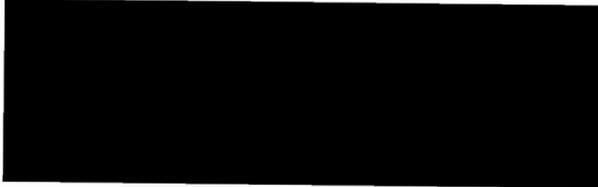


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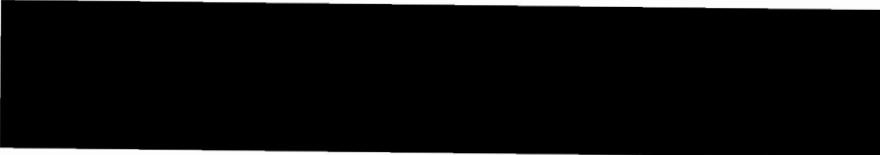
D-2

FILE: EAC 06 163 50391 Office: VERMONT SERVICE CENTER Date: **MAR 31 2008**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides media services to the Hispanic community, employs approximately 45 personnel, and had a gross annual income in 2005 of approximately \$5,200,000. It seeks to employ the beneficiary as an administrative services manager. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On February 7, 2007, the director denied the petition, determining that the record did not establish: (1) that the proffered position is a specialty occupation; or (2) that the beneficiary was qualified to perform the duties of the proffered position. On appeal, counsel for the petitioner submits a brief.

The record contains: (1) the Form I-129 filed May 3, 2006 and supporting documentation; (2) the director's August 29, 2006 request for evidence (RFE); (3) counsel for the petitioner's November 20, 2006 response to the director's RFE; (4) the director's February 7, 2007 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The AAO first determines that the record contains sufficient evidence to establish that the beneficiary is qualified to perform the duties of the proffered position. The AAO withdraws the director's decision to the contrary as it relates to the beneficiary's qualifications to perform the duties of an administrative services manager as described by the petitioner. However, the petitioner in this matter has not established that the proffered position is a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In an April 11, 2006 letter appended to the petition, the petitioner stated that the individual in the position of administrative services manager would "direct or coordinate the billing department of the company," and the job would include the following specific job duties:

- Reviews and corrects customer accounts to determine amounts over or under paid.
- Set[s] goals and deadlines for the department.
- Analyze[s] internal billing processes and recommend[s] and implement[s] procedural or policy changes to improve operations, such as software changes or the maintenance and disposal of billing records.
- Monitor[s] federal and state collections law to ensure company compliance.
- Prepare[s] and review[s] operational reports and schedules to ensure accuracy and efficiency.

In a November 20, 2006 response to the director's RFE, counsel for the petitioner repeated the above description and asserted that the proffered position qualified as a specialty occupation because the petitioner's job description was most consistent with the Department of Labor's *O*NET (O*NET)* Occupational Code for administrative services manager and the specific vocational preparation (SVP) range for that position is between seven and eight. Counsel observed that *O*NET* reported that most of "these" occupations require a four-year bachelor's degree but some do not; and that the implication of this language was an indication that employers would normally require a bachelor's degree. Counsel also contended that the petitioner normally required a degree or its equivalent for the position. Counsel noted that the petitioner had three primary offices in Winston-Salem, Raleigh, and Charlotte, North Carolina and that although the president of the company had traditionally managed all company operations, he had hired the company's first administrative services

manager (labeled regional business manager – triangle area) for the Raleigh office. Counsel indicated that the individual in the Raleigh administrative services manager position possessed a bachelor's degree in banking administration. Counsel further noted that the petitioner's original Winston-Salem office had grown to the extent that the company desired a manager (the proffered position) for its billing operations.

Counsel provided a copy of its organizational chart depicting the company's various components/departments and indicating that the proffered position fell under the "control and financial services" division of the administration department and the individual in the position would be responsible for directing and coordinating the company's billing and collection practices. Counsel provided a list of the company's employees that indicated the individual in the Raleigh administrative services manager position (identified on the employee list as regional business manager – triangle area) would be responsible for the administration of the Raleigh office. Counsel also submitted a third party evaluation of the beneficiary's administrative, operational, and financial management skills acquired through her educational background and the evaluator's conclusion that these skills are directly related to the performance of the duties of the petitioner's administrative services manager position.

On February 7, 2007, the director denied the petition. The director observed that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reported that the educational requirements for administrative services managers varied widely; that the duties of the proffered position, as described, were not of the scope and complexity to require a bachelor's degree in a specific specialty; and that elements of the petitioner's description of the duties of the proffered position resembled the duties of bookkeeping, accounting, and auditing clerks, positions that, according to the *Handbook* do not require a bachelor's degree in a specific discipline. The director determined that the record failed to establish that a bachelor's degree in a specific specialty is the minimum requirement for entry into the proffered position. The director also noted the petitioner's employment of an individual as an administrative services manager who possessed a bachelor's degree in banking administration, but found that the petitioner's self-imposed hiring practices did not establish that the position required the theoretical and practical application of a body of highly specialized knowledge. The director determined that the petitioner had not demonstrated that the nature of the proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The director concluded that the petitioner had not established the proffered position as a position incorporating the duties of a specialty occupation.

On appeal counsel for the petitioner asserts that the director erred when summarily dismissing the *O*NET* evidence and incompletely reviewing the information in the *Handbook*. Counsel contends that the information from the *O*NET* offers a conclusive statement that "most of these occupations require a four year bachelor's degree, but some do not," while the *Handbook's* report is inconclusive, simply indicating that the educational requirements for these managers vary widely. Counsel claims that the proffered position aligns more closely to that of a market research analyst, a management analyst, or an operations research analyst position as the position is an analytical and managerial position. Counsel asserts that the duties of the proffered position are complex and relied on by management in making strategic business decisions and that the petitioner normally requires a degree or its equivalent for the position as demonstrated by its employment of an individual with a bachelor's degree in banking administration for its Raleigh office in the position of administrative services manager (entitled Regional Business Manager- Triangle Area).

Counsel's assertions are not persuasive. The AAO turns first to the description of the proffered position and finds that the petitioner has provided an overview of the duties the beneficiary will perform for the petitioner. For example, the petitioner indicates that the beneficiary in the proffered position will analyze internal billing processes and recommend and implement procedural or policy changes, set goals and deadlines, and monitor federal and state collection law to ensure company compliance. The petitioner does not however, provide evidence of specific projects, specific procedures, or specific problems that require analysis. Moreover, this description is generic and does not reveal the actual daily duties involved in accomplishing these routine tasks. As these duties involve directing or coordinating the petitioner's billing department, the duties suggest that the individual in the proffered position would be performing and planning the work of the billing department. This inference is confirmed by the petitioner's indication that the individual in the proffered position will be reviewing and correcting customers' accounts and preparing reports and schedules for accuracy and efficiency. Contrary to counsel's assertion on appeal, the petitioner has not provided any evidence of specific analytical tasks that elevate the position to a management analyst or an operations research analyst position. Likewise, the brief description does not include any elements of market research. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to the petitioner's particular business interests. Paraphrasing duties and responsibilities outlined in *O*NET* for an administrative services manager does not explain the beneficiary's specific role in the petitioner's organization. Generalized descriptions are necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. The broad statements provided as a description of the duties of the proffered position preclude CIS from determining what skills and knowledge would be required to perform the tasks associated with these duties. To reiterate, as the record does not contain a detailed description of the duties involved in accomplishing broadly stated responsibilities, neither can the AAO conclude that the tasks require that the individual performing the tasks have a bachelor's degree or its equivalent in a specific discipline. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It has not detailed the actual work to be performed for this position rather than describing an occupation. The record does not provide the detailed descriptions and documentary evidence to assist CIS or the AAO in determining whether the proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge which requires the attainment of a bachelor's or higher degree in a specific specialty as a minimum for entry into the occupation in the United States. Without such information, the AAO is unable to determine the tasks to be performed by the beneficiary on a day-to-day basis and, therefore, whether the proffered position's duties are of sufficient complexity and specialization to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty.

The AAO acknowledges counsel's reference to the *O*NET* for the occupation of administrative services manager. The AAO observes that counsel has taken a statement from an *O*NET* excerpt out of context in an effort to demonstrate that employers normally require a college degree for the position of an administrative

services manager. The AAO finds however, that the *O*NET*, in addition to providing a broad overview of the occupation of administrative services manager, does not provide definitive information relating to the educational requirements, if any, necessary to perform the duties of an administrative services manager. The *O*NET* references work-related experience, on-the-job training and/or vocational training as part of the preparation necessary for individuals in these occupations, notes that many of these occupations involve coordinating, supervising, managing, or training others, as well as indicating that many of these occupations require a four year bachelor's degree, while some do not. Moreover, the *O*NET* includes examples of "these" occupations as including accountants, human resource managers, computer programmers, teachers, chemists, and police detectives. The *O*NET* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. The AAO does not find the *O*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific discipline.

The AAO further acknowledges the third party evaluation of the beneficiary's administrative, operational, and financial management skills acquired through her educational background and the evaluator's conclusion that these skills are directly related to the performance of the duties of the petitioner's administrative services manager position. The AAO takes note of the evaluation but does not find that the evaluator has offered an opinion that the proffered position is a specialty occupation.

Based on the above discussion, the AAO determines that the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from similar but non-degree-requiring positions. Again, without a meaningful job description, the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. The petitioner has failed to establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO acknowledges the information in the record regarding the petitioner's employment of an individual with a bachelor's degree in banking administration in the position of administrative services manager or regional business manager – triangle area. The AAO observes that the individual in the regional business manager position (Raleigh position) is responsible for the administration of the Raleigh office. The proffered

position, as described by the petitioner, requires the individual in the proffered position to "direct or coordinate the billing department of the company." The petitioner has not provided evidence that these two positions incorporate the same or similar duties. Thus, the petitioner has not established that the two positions are the same position, even if the petitioner identifies the Raleigh position as an administrative services manager. The petitioner has not established a history of recruiting and hiring degreed candidates for the proffered position. Further, the AAO notes that if CIS was limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline. Again, the record in this matter does not include sufficient information regarding the specific duties of the proffered position and how those duties relate to the petitioner's business to demonstrate that the tasks associated with the proffered position require the application of specialized or complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree. Without a meaningful description of the actual day-to-day tasks of the proffered position, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner, therefore, has not established that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition will be denied and the appeal dismissed for the above stated reason. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.